

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
RICHARD H. LIVINGSTON,**

Plaintiff,

**9:19-cv-353
(GLS/CFH)**

v.

WILLIAM HOFFNAGLE et al.,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

RICHARD H. LIVINGSTON
326 N. Beech Street
Syracuse, NY 13207

FOR DEFENDANTS:

HON. LETITIA JAMES
New York State Attorney General
The Capitol
Albany, NY 12224

CHRISTOPHER J. HUMMEL
Assistant Attorney General

**Gary L. Sharpe
Senior District Judge**

ORDER

The above-captioned matter comes to this court following a Report-Recommendation and Order by Magistrate Judge Christian F. Hummel duly filed on November 8, 2019. (Dkt. No. 16.) Following fourteen days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed, and the court having reviewed the Report-Recommendation and Order for clear error, it is hereby

ORDERED that the Report-Recommendation and Order (Dkt. No. 16) is **ADOPTED** in its entirety; and it is further

ORDERED that defendants' motion to dismiss (Dkt. No. 12) is **GRANTED IN PART** and **DENIED IN PART** as follows:

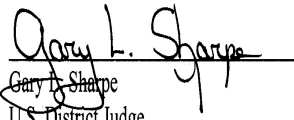
GRANTED with respect to the following claims, which are **DISMISSED WITH PREJUDICE**: Eighth Amendment failure to protect claim; Eighth Amendment conditions of confinement claim; conspiracy claim; First Amendment retaliation claim; and supervisory claim against defendant William Hoffnagle insofar as that claim is based upon plaintiff Richard H. Livingston's Eighth Amendment failure to protect, conditions of confinement, conspiracy claims, and First Amendment retaliation claim; and **DENIED** as to Livingston's: Eighth Amendment excessive force claim; and supervisory claim against Hoffnagle insofar as that claim is based upon plaintiff's Eighth Amendment excessive force claim; and it is further

ORDERED that the Clerk provide a copy of this Order to the parties

in accordance with the Local Rules of Practice.

IT IS SO ORDERED.

January 7, 2020
Albany, New York



Gary L. Sharpe
U.S. District Judge